

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

O'clock & min

SEP 10 2007

United States Bankruptcy Court
Columbia, South Carolina (11)

IN RE:

Jeffrey Patrick Stone,
Stacey Leigh Stone,

Debtors

C/A No. 07-03400/W

ORDER TO PRODUCE
DOCUMENTS

Chapter 13

ENTERED

SEP 10 2007

K.E.P.

This matter comes before the Court for confirmation of Debtors' chapter 13 plan. At the hearing, the parties announced that they had agreed to continue the issues relating to confirmation, but that they had one issue of contention, involving a request from the Trustee for Debtors to submit supporting documentation of the utility expenses appearing in Debtors' Schedule J and Statement of Current Monthly Income. Debtors contend that they do not have to provide this information since 11 U.S.C. § 707(b)(2)(A)(ii) expressly allows Debtors to use certain standard expenses provided for by the means test. Trustee stated that he will not attempt to preclude Debtors from making any argument, or to construe Debtors' providing the information as a waiver of any defenses at any later time.

11 U.S.C. § 521(a)(1)(B) requires Debtors to file "a schedule of current income and current expenditures." This requirement is satisfied through the filing of Schedules I and J.¹ Schedule J, an official form, is titled as "Current Expenditures on Individual Debtor(s)" and contains the instruction that Debtors are to estimate their "average or projected monthly expenses" at the time the case is filed. Though the means test of 11 U.S.C. § 707(b)(2) excludes from income certain benefits, like social security benefits, and allows certain expenses in standard amounts, the means test does not override Debtors' duty under 11 U.S.C. § 521(a)(1)(B) to report current income and current expenses. See In re Ward, 359 B.R. 741, 745-746 (Bankr. W.D. Mo. 2007) (holding "nothing has changed with regard to the requirement that a debtor file complete and accurate schedules as prescribed by the appropriate Official Forms in accordance with § 521(a)(1) and Rule 1007. The requirement that debtors file schedules showing 'current income and current expenditures' in those provisions is simply not the same as the defined term, 'current monthly income....'"). 11 U.S.C. § 707(b)(2)(A)(ii) is, pursuant to its terms, confined in a chapter 7 to determining whether there is a presumption of abuse and in a chapter 13 to determining whether a debtor's plan may be "approved" over an objection made pursuant 11 U.S.C. § 1325(b). This section does not negate a debtor's duty under 11 U.S.C. § 521(a)(1)(B) to report a debtor's true current income and expenses since such may be considered in determining whether a debtor's plan meets the standard for confirmation under 11 U.S.C. § 1325(a), including good faith and feasibility. See Edmunds, 350 B.R. 636, 648-649 (Bankr.

¹ If a debtor fails to file a schedule of "current expenditures" within 45 days of the petition, then a debtor's case may be dismissed pursuant to 11 U.S.C. § 521(i).

D.S.C. 2006). In this case, Debtors' Schedule J fails to reflect Debtors' actual expenses since, in multiple categories, it merely reflects standard expenses allowed by the means test for the limited purpose of 11 U.S.C. § 1325(b). Finally in this case, Debtors failed to present evidence that providing such information would prejudice them. Therefore,

IT IS HEREBY ORDERED that the Debtors shall amend their Schedule J by September 14, 2007 to provide information sufficient to show their actual expenses in all categories set forth on that form, and

IT IS FURTHER ORDERED that by September 14, 2007, Debtors shall provide the Trustee with sufficient supporting documentation to support Debtors' utility expenses on Schedule J, and

IT IS FURTHER ORDERED that pursuant to 11 U.S.C. § 521(i), this case may be dismissed upon recommendation of the Trustee, without prior notice to Debtors, if Debtors fail to amend their Schedule J pursuant to the terms of this Order.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
September 10, 2007